

REMARKS

Claims 1-16 are pending in this application. Claims 1, 2, 6 and 7 are rejected. Claims 3-5 and 8-15 are withdrawn from consideration. Claims 1, 2, 6 and 7 are amended herein, and new Claim 16 is presented.

The Restriction Requirement

Restriction has been required to one of the inventions of the following groups of claims:

Group I: Claims 1-7 drawn to an apparatus, classified in Class 606, subclass 60.

Group II: Claims 8-15, drawn to a method of use, classified in Class 606, subclass 69.

Furthermore, an election of species was required between the species of Figs. 1A, 1B, 1C and 1D.

Pursuant to a telephone conversation with the undersigned, a provisional election was made with traverse to prosecute the invention of Group I, Species 1, Claims 1, 2, 6 and 7. Affirmation of said election is made herein.

TRAVERSE

Pursuant to MPEP §803, it is required that there be a serious burden on the examiner if restriction is not required. It is respectfully submitted that there is no serious burden on the examiner and that a search performed for the claims of one species would necessarily encompass a search for all claims because of the closeness of the subject matter encompassed by all of the claims.

Moreover, the device of claims 1-7 cannot be used by any other method but that of Claims 8-15.

Accordingly, reconsideration and withdrawal of the restriction requirement, and examination of all pending claims is respectfully requested.

The Rejections

1. Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. §102(e) as being anticipated by Boyce et al. U.S. Patent No. 6,294,187 (hereinafter, "Boyce et al."). Boyce et al. discloses a load-bearing osteoimplant as shown in Fig. 3 of Boyce et al. which includes a plate having throughbores and screws so as to be secured to both adjacent vertebrae 94 and 96.

Claim 1 is amended herein to additionally recite, *inter alia*, that the implant retaining body of the present invention covers not more than a portion of the height of the opening of the receiving bed, and that the retaining body is fixed to only one of the vertebral bodies by a fastener. As can be seen from FIG. 3 of the present application, the implant retaining body 12 is fastened to only one vertebral body and does not extend completely across the entire height of the opening of the receiving bed. Unlike Boyce et al., it is not attached at its other end to the adjacent vertebral body. Accordingly, the invention as presently claimed is distinguished over that disclosed by Boyce et al. Reconsideration and withdrawal of the rejection of Claims 1, 2, 6 and 7 over Boyce et al. are respectfully requested.

2. Claims 1 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by Miner U.S. Patent No. 1,025,008 (hereinafter, "Miner"). Miner shows a brace for fractured bones which extends completely across a fracture and is fastened to the

portions of the bone on both sides of the fracture. Miner does not disclose or suggest vertebral bodies, and does not disclose or suggest an implant retainer which is attached to only one of two adjoining vertebral bodies. Rather, the function of the Miner brace is to secure two bone fragments in a fixed position and therefore must be fastened to both fragments. In contrast to this, the implant retainer of the present invention is adapted to prevent intervertebral implant 20 from backing out of its receiving bed. See, e.g., Applicants' specification, page 6, lines 1-4. To accomplish this function, it is only necessary to block a portion of the opening between the adjoining vertebral bodies.

Accordingly, it is respectfully submitted that Miner neither discloses nor suggests the invention as claimed. Reconsideration and withdrawal of the rejection of Claims 1 and 6 over Miner are respectfully requested.

Other Amendments

Amendments are made to Claims 2, 6 and 7 to conform to amended Claim 1.

New Claim 16 is added to recite features originally in Claim 1.

CONCLUSIONS

All of the pending claims are submitted to be patentable and in condition for allowance, the same being respectfully requested.

Respectfully submitted,

DILWORTH & BARRESE, LLP

By:

  
Peter G. Dilworth  
Registration No. 26,450  
Attorney for Applicants

DILWORTH & BARRESE, LLP  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
(516) 228-8484  
(516) 228-8516 (FAX)

PGD/ATC:mg